IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

TUESDAY, THE 18TH SEPTEMBER 2007 / 27TH BHADRA 1929

Crl.Rev.Pet.No. 990 of 2006()

CRA.462/2003 of ADDL.SESSIONS COURT (ADHOC)III, MANJERI
CC.471/1993 of JUDL.MAGISTRATE OF FIRST CLASS COURT, TIRUR

.....

REVN. PETITIONER: APPELLANT/ACCUSED:

KULATHUPADY ACHUTTY @ BALAN,
S/O. THUPRAN, TIRUNAVAYA AMSOM, EDAKKULAM DESOM,
TIRUR TALUK, MALAPPURAM DISTRICT.

BY ADV. SRI.SAJU.S.A

RESPONDENTS: RESPONDENT/COMPLAINANT:

STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.K.S. SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 18/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. Ramkumar, J.

Crl.R.P. No. 990 of 2006

Dated: 18th September 2007

ORDER

The revision petitioner who was the sole accused in C.C. 471 of 1993 on the file of the Judl. First class magistrate, Tirur challenges the conviction entered and the sentence passed concurrently by the court below for an offence punishable under Sec. 324 I.P.C.

2. The case of the prosecution can be summarised as follows:

On 15-04-1993 at about 10.30 a.m. the accused voluntarily caused hurt to P.W.1 his brother in front of the house bearing Thirunavaya Panchayath Door No. V/211 by stabbing him with a broken piece of bottle.

3. On the side of the prosecution 8 witnesses were marked as P.Ws 1 to 8 and 4 documents were marked as Exts. P1 to P4.

4. After the close of the prosecution evidence, the accused was questioned under Sec. 313 (1)(b) Cr.P.C. with regard to the incriminating circumstances appearing against him in the evidence for the prosecution. He denied those circumstances and maintained his innocence and submitted that the injuries were sustained by P.W.1 during the course

of the scuffle and that P.W.1 was the aggressor.

5. The learned Magistrate, after trial, as per judgment dated 05-12-2003 found the revision petitioner guilty of the offences and sentenced him to simple imprisonment for three months and to pay fine of Rs. 1000/- and in default to pay the fine, to suffer simple imprisonment for one month. Eventhough the revision petitioner preferred an appeal as Crl.Appeal No.462 of 2003 before the Addl. Sessions Court, (Fast Track Court -III Adhoc) Manjeri as per judgment dated 29-12-2005 the said appeal was dismissed confirming the conviction entered and the sentence passed against the petitioner. Hence, this revision.

6. Eventhough the learned counsel appearing for the revision petitioner assailed the conviction submitting inter alia that there were contradictions inter - se between the eye-witnesses and the injured and that there was also contradictions between the medical and ocular evidence, in as much as the conviction has been recorded concurrently by the courts below, after a careful evaluation of the oral and documentary evidence in the case, I see little scope of interference by this Court sitting in the rarefied revisional jurisdiction. The conviction is accordingly, confirmed.

7. What now survives for consideration is the

question regarding the illegality or otherwise of the sentence imposed on the revision petitioner. In as much as the revision petitioner and the victim are brothers and the occurrence took place in the course of a scuffle pursuant to a family dispute, I do not think that the revision petitioner deserves penal servitude by way of incarceration. I am of the view that interests of justice will be adequately met by imposing an appropriate fine and payment of compensation to P.W.1 the injured. Accordingly, the sentence imposed on the revision petitioner is set aside and instead he is sentenced to undergo imprisonment till rising of the court and to pay a fine of Rs. 5,000/- and on default to pay the fine to suffer simple imprisonment for one month. From out of the fine amount a sum of Rs. 4,000/- shall be paid to P.W.1 as compensation under Sec. 357 (1) Cr.P.C. The fine amount shall be deposited within one month from today.

Confirming the conviction entered and modifying the sentence imposed against the petitioner, this revision is disposed of.

V. Ramkumar, Judge.

ani.